

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**NATIONAL FIRE AND MARINE
INSURANCE COMPANY,**

Plaintiff,

v.

**LEE LINDEMANN, Special Administrator
of the Estate of SUE ANN LINDEMANN, et al.,**

Defendants.

No. 3:15-cv-910-DRH-DGW

ORDER

Pending before the Court is plaintiff's motion to voluntarily dismiss its amended complaint for declaratory judgment against certain defendants pursuant to FEDERAL RULE OF CIVIL PROCEDURE 41(a)(2) (Doc. 86). Defendants filed no objection.¹ "The determination of whether to grant a motion for voluntary dismissal rests within the sound discretion of the district court." *Tyco Labs., Inc. v. Koppers Co., Inc.*, 627 F.2d 54, 56 (7th Cir. 1980). This is a declaratory judgment action. At the time National Fire brought this action, the state court medical malpractice case was still pending. Now, plaintiff states that a settlement as to the related medical malpractice lawsuit was recently reached between the parties of that suit, and a release was executed in favor of Midwest Emergency Department Services, Inc., Charles DuMontier, M.D., Radiology

¹ Defendant Midwest Emergency Department Services, Inc., who is referenced in the pending motion, filed an objection (Doc. 97) to the separately filed motion to dismiss its crossclaim pursuant to 12(b)(1) (Doc. 87). That motion shall be addressed by separate order.

Consultants of Mid-America, P.C., Erick Falconer, M.D., Western Healthcare, LLC, and Lincoln Surgical Associates, Ltd.

Based upon the state court settlement, there is no longer an actual controversy as to plaintiff's claims against some defendants in this case. Thus, dismissal of plaintiff's claims against defendants Charles DuMontier, M.D., Radiology Consultants of Mid-America, P.C., Erick Falconer, M.D., Western Healthcare, LLC, Lincoln Surgical Associates, Ltd, and Midwest Emergency Department Services, Inc. will not prejudice this case. Accordingly, the Court **GRANTS** the motion and **DISMISSES without prejudice** plaintiff's claims against defendants Midwest Emergency Department Services, Inc., Charles DuMontier, M.D., Radiology Consultants of Mid-America, P.C., Erick Falconer, M.D., Western Healthcare, LLC, and Lincoln Surgical Associates, Ltd. Plaintiff's claims against Lee Lindemann, Special Administrator of the Estate of Sue Ann Lindemann, and St. Elizabeth's Hospital of the Sisters of the Third Order of St. Francis and defendants' crossclaims remain.

IT IS SO ORDERED.

Signed this 11th day of January, 2016.

David R. Herndon
Digitally signed
by Judge David
R. Herndon
Date: 2016.01.11
11:20:30 -06'00'

United States District Judge